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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)	
)	
Amendment of Part 61 of the)	RM-7967
Commission's Rules to Require)	AAD 92-39
Quality of Service Standards)	
In Local Exchange Carrier)	
Tariffs)	

GTE's COMMENTS

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its affiliated domestic
telephone operating companies

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SUMMARY

In fact, the Petition is calling for the Commission to prescribe performance standards to be included in the tariffs of exchange carriers. GTE urges the Commission to reaffirm its policy rejecting such proposals. There has been no showing of any need for government action mandating such an extraordinary change in the carriers' relationship with their customers; the costs and burdens of such action would be immense for the Commission as well as the industry; and it would conflict directly with well-established policy objectives of the Commission. The Petition should be dismissed as untimely and repetitive.

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GTE's COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), with reference to the Commission's Public Notice, DA 92-634 released May 21, 1992, and the Joint Petition for Rulemaking ("the Petition") submitted April 6, 1992 by International Communications Association ("ICA") and the Consumer Federation of America ("CFA"), hereby submit the following comments.

The Petition asks the FCC to impose a new requirement on local exchange carriers ("exchange carriers" or "LECs"). This requirement, which would apply to those exchange carriers (including GTE) subject to price caps regulation, would compel the inclusion in interstate tariffs of quality of service standards.

DISCUSSION

1. **The implications of the Petition justify dismissal.**

When these implications of the Petition's proposal are examined, they indicate the Petition should be dismissed:

First: This same argument was presented to the FCC twice before within the two years.¹ Merely because exchange carriers have submitted information requested by a Congressional committee,² ICA and CFA have presented the FCC once again with the same arguments, the same irrelevant detail, the same unworkable proposal. In substance, the Petition is a petition for reconsideration of the Second Report & Order filed twenty months late; and a repetitive submission vis-a-vis the pending application for review of Tele-Communications Association ("TCA") filed June 17, 1991 with regard to a decision in D.87-313 by the Chief, Common Carrier Bureau, 6 FCC Rcd 2974 (1991) ("the Bureau Order"), ICA and CFA having joined in the TCA application.

Second: The Petition starts out with a transparent misstatement. It says (at ii): "At present, the LECs are the only major service vendors in the nation's economy which are in no way obligated to meet specific and enforceable quality standards." There is not a single fact presented in the Petition to support this extraordinary statement. No such standards are required to be contained in the tariffs of numerous kinds of carriers; indeed such large firms as MCI and Sprint are under no obligation to file tariffs at all. The imposition, by government action having the force of law, of detailed service standards

¹ See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313 ("D.87-313"), Second Report and Order ("Second Report & Order"), 5 FCC Rcd 6786, 6827-31 (1990) (subsequent citations omitted).

² United States House of Representatives, Energy and Commerce Committee.

does not exist with regard to the furnishing of computer services, "enhanced" services, or the like. Based on this remarkable misstatement, the Petition would have the FCC place on exchange carriers an extraordinary burden going even beyond traditional federal regulation.

Third: The Petition minimizes the burden associated with its proposal by saying it seeks not "standards-setting" but merely disclosure of the carrier's own standards. But the Petition is not seeking mere disclosure. It is demanding inclusion of performance standards in exchange carrier tariffs. As ICA and CFA know perfectly well, performance standards included in a carrier's tariffs would form part of the carrier's undertaking; as such they would alter the relationship between carrier and customer by potentially denying the carrier recovery of charges or creating potential liabilities for the carrier. This is not merely an informational function. Furthermore, inclusion of standards in tariffs would activate or increase statutory requirements with regard to such significant questions as discrimination. If the carrier's tariffed undertaking is expanded to include specific performance criteria, the legal questions raised in this manner would undoubtedly entail a need for explicit FCC review and decision-making as to whether this performance standard is better than that one, and whether the two (or more) are acceptable, and how they would affect different kinds of parties. There is no reason to believe turning performance standards into a tariff-review and tariff-enforcement

matter would not prove to be as complex and demanding as other aspects of the tariffing process.³

Fourth: By making a carrier's internal standards also an external standard, enforceable by government action through the complaint process or otherwise, the effect of the Petition's proposal would be to provide a carrier with incentives pointing away from setting ambitious performance standards. Indeed, the setting of ambitious standards as a management tool designed to pressure the organization to improve service would be discouraged because heavy penalties could be attached to falling short. For this reason, the net effect of adopting the proposal of the Petition might be, compared to what they would otherwise be, an effective reduction of industry performance standards.

In summary: The implications of the Petition's proposal, discussed further infra, indicate the Petition should be dismissed.

2. **The Petition should be dismissed as a late-filed petition for reconsideration of the Second Report & Order and as a repetitive filing vis-a-vis TCA's pending application for review of the Bureau Order.**

In October 1990, the Commission released its Second Report & Order adopting price cap regulation for certain exchange

³ The Common Carrier Bureau has found that inclusion of the standards in the tariffs would "lead to various challenges of the standards so filed, with the result that the Commission would be expected to rule upon the acceptability of these standards, and probably to enforce them." The Bureau Order, 6 FCC Rcd at 2991-92. As discussed infra, the Petition itself indicates this will happen.

carriers. The FCC then addressed at length and after careful consideration "the theoretical concern that LECs under price cap regulation might seek to increase their profits not by becoming more productive, but by lowering the quality of the service they provide."⁴ The FCC said it "continue[d] to believe ... that under price caps the LECs will have increased incentive and opportunity to develop and introduce new services; to invest in new technology ... that will promote cost savings and efficiencies; to innovate; and to upgrade their networks."⁵ And it added:

These carriers are unlikely to jeopardize their network infrastructure, since it is their primary asset and is critical to their continued financial stability. We thus consider it reasonable to expect that price cap carriers will continue to maintain the quality of their network and improve service to customers.⁶

Even though the FCC believed its "price cap plan creates strong incentives to maintain high quality and to develop the network," it decided to "expand significantly our monitoring of service quality and infrastructure development."⁷ Accordingly, the Commission directed the Common Carrier Bureau ("Bureau") to address service quality and infrastructure reporting.

In May 1991, the Bureau Order dealt with service quality reporting requirements for exchange carriers subject to price cap

⁴ Id. at 6827.

⁵ Id.

⁶ Id.

⁷ Id.

regulation. After considering the arguments of ICA and CFA and their allies that performance standards should be included in exchange carrier tariffs -- the very same arguments now being presented once again -- the Bureau Order decided that "a requirement that LECs file all service quality standards in their interstate tariffs is not warranted at this time."⁸ The Bureau Order suggested that such a requirement would entail "considerable administrative burden and lag."⁹ While prescribed standards may provide certain benefits, reasoned the Bureau, they sought realization of these benefits through the "detailed and thorough monitoring program we have established."¹⁰

Subsequent to the release of the Bureau Order, TCA filed its pending application for review. TCA was joined by a number of parties including ICA and CFA. The Petition, which merely duplicates the issues raised by the pending application, should be dismissed as repetitive under Section 1.401(e) of the Commission's Rules.

Further, the Petition is in substance asking for reconsideration of the Second Report & Order, where it was concluded there were ample incentives for exchange carriers to maintain and improve quality of their networks.¹¹ To this extent, the Petition is simply a late-filed petition for

⁸ The Bureau Order, 6 FCC Rcd at 2991.

⁹ Id.

¹⁰ Id. at 2992.

¹¹ Second Report & Order, 5 FCC Rcd at 6827.

reconsideration that should be dismissed under Section 1.429(b) of the Commission's Rules.

In summary: The Petition should be dismissed as untimely and repetitive.

3. **The Petition pretends to seek nothing more than making the LECs' internal standards part of their tariffs; but in fact the Petition seeks to have the Commission set, and enforce, technical performance standards for the exchange carrier industry -- something already rejected by the Commission.**

The Petition offers no persuasive reason why the submissions of exchange carriers to the Energy and Commerce Committee of the House of Representatives in February of 1992 has any bearing on the decisions rendered by the Commission and the Bureau. The exchange carriers' internal standards were well known when the Commission and Bureau decisions were made. The submissions to Congress represent nothing more than a pretext for still another argument of the same matter.

Ostensibly, ICA and CFA are merely arguing for including in exchange carrier tariffs the internal standards employed by the carriers themselves.¹² But a close reading of the Petition discloses that they are really seeking FCC definition of standards -- precisely what the FCC has declined to do. Thus the Petition (at 11) says:

Neither the Commission nor users will benefit from tariffed quality of service standards, however, unless

¹² "The users represented by the Joint Petitioners are simply requesting that the Commission require the LECs to include in their tariffs the internal performance standards which these carriers already utilize...." Petition at 15-16.

[the standards] measure the relevant parameters of service. It is therefore important that the Commission identify the particular categories of standards which should appear in the LECs' tariffs. This will also ensure that all of the LECs subject to price cap regulation include the same service quality standards in their tariffs.

These words, together with the discussion that follows at Petition 11-15, indicate the Petition is asking the Commission to do far more than just have the exchange carriers' internal standards included in their tariffs. There will be no benefit, these words say, unless the standards "measure the relevant parameters of service"; so the Commission would have to address once again measurement questions and the relevance of various parameters, and here in a tariff context. These words evasively speak of "the Commission identify[ing] the particular categories of standards which should appear in the LECs' tariffs"; but to accomplish what the Petition says is indispensable -- "measur[ing] the relevant parameters of service" -- would require more than just identifying "the particular categories of standards"; it would involve identifying the standards themselves. This point is driven home by the closing words quoted supra: "This will also ensure that all of the LECs subject to price cap regulation include the same service quality standards in their tariffs." To ensure this outcome, the Commission would have to approve the service standards for the industry, and as a tariff matter. Expressed in plain English, this is just what the Petition seeks -- FCC standard setting for the industry. The assertion that the Petition is only asking to

have the carriers' internal standards included in tariffs is just another transparent ploy.

This emerges again when the discussion on the next few pages of the Petition is examined. At 11-15, the Petition specifies certain parameters that it says should be included in the standards applicable to exchange carrier performance pursuant to tariffs. Specifically, they suggest that -- for digital transmission services -- bit error rate, availability, and error-free seconds be included; and -- for dial-up analog -- signal-to-noise ratio, call completion, and post-dial delay be incorporated. The first three parameters have already been ruled out by the Bureau because the reporting of this information "fails to establish the balance between usefulness and burden that the Commission directed [the Bureau] to seek."¹³ And post-dial delay was replaced with LEC call set-up time.¹⁴

There is a transparent deception that is central to the Petition: claiming to be merely asking for the FCC to include in tariffs the LECs' internal standards while actually asking for the FCC to "ensure that all of the LECs subject to price cap regulation include the same service quality standards in their tariffs." This deception is carried forward to the Petition's attempts at justification. Thus, the Petition (at 16) asserts "virtually no burden" would be imposed on exchange carriers since it is only a question of submitting "tariff revisions stating in

¹³ Bureau Order, 6 FCC Rcd at 2980.

¹⁴ Id. Attachment B, at 3004-05.

summary form the standards already in place." Of course "the Commission should seek comment on appropriate substitute standards."¹⁵ And there is "the possibility ... that the Commission could be asked to rule upon the reasonableness of, and perhaps to enforce, tariffed quality of service standards" because the "users which comprise the Joint Petitioners would themselves oppose a tariff revision which set an unacceptably low standard...."¹⁶ And this opposition would be expressed by "petitions against new tariff filings."¹⁷ There is then a "small potential that the Commission could become involved in disputes over service quality standards."¹⁸

A "small potential" of disputes over tariffed service quality standards? ICA/CFA must think the Commission is wonderfully gullible. The history of this very matter shows how "small" the "potential" is of conflict. The conflict goes on forever, with no FCC decision ever accepted as final. How many times are parties required to re-argue the same issues? How many times is the Commission required to decide the same questions? The Commission decided this matter in the Second Report & Order when it put aside the setting of technical standards and adopted a monitoring approach. This was grounded in the Commission's understanding of exchange carriers' motivation, essentially that

¹⁵ Petition at 16.

¹⁶ Id.

¹⁷ Id. at 17, footnote omitted.

¹⁸ Id.

they have no motivation to allow their own systems to deteriorate; that their motivation is to be sure their services remain competitive. The Petition says nothing new, raises no new facts or issues that would cast doubt on the Commission's conclusions.

The Petition pretends there is a problem of information not being available concerning the internal standards employed by exchange carriers. And yet it stresses (at ii) that by submissions to Congress those standards have recently been made public. There is no indication in the Petition that ICA or CFA or the users they represent have asked for and been denied any particular information about exchange carrier standards. In fact, many exchange carriers will readily discuss performance standards with their customers. Providing such information is entirely different from having those standards included in the carrier's tariff commitment.


Accordingly: GTE urges the Commission to reaffirm its decision not to prescribe performance standards for exchange carriers for all the reasons set out in the Second Report & Order and quoted supra. There has been no showing of any need for government action mandating such an extraordinary change in the carriers' relationship with their customers, the costs and burdens of such action would be immense for the Commission as

well as the industry, and it would conflict directly with well-established policy objectives of the Commission.

Respectfully submitted,

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Certificate of Service

I, Jennifer R. McCain, hereby certify that copies of the foregoing "Comments Of GTE" have been mailed by first class United States mail, postage prepaid, on the 22nd day of June, 1992 to the following parties:

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